

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1000**

Introduced by Karpisek, 32.

Read first time January 20, 2010

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend  
2 section 53-125, Reissue Revised Statutes of Nebraska,  
3 and section 53-103, Revised Statutes Supplement, 2009;  
4 to change provisions relating to managers and limited  
5 liability companies; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 53-103, Revised Statutes Supplement,  
2 2009, is amended to read:

3                   53-103 For purposes of the Nebraska Liquor Control Act,  
4 unless the context otherwise requires:

5                   (1) Alcohol means the product of distillation of any  
6 fermented liquid, whether rectified or diluted, whatever the origin  
7 thereof, and includes synthetic ethyl alcohol and alcohol processed  
8 or sold in a gaseous form. Alcohol does not include denatured  
9 alcohol or wood alcohol;

10                  (2) Spirits means any beverage which contains alcohol  
11 obtained by distillation, mixed with water or other substance  
12 in solution, and includes brandy, rum, whiskey, gin, or other  
13 spirituous liquors and such liquors when rectified, blended, or  
14 otherwise mixed with alcohol or other substances;

15                  (3) Wine means any alcoholic beverage obtained by the  
16 fermentation of the natural contents of fruits or vegetables,  
17 containing sugar, including such beverages when fortified by the  
18 addition of alcohol or spirits;

19                  (4) Beer means a beverage obtained by alcoholic  
20 fermentation of an infusion or concoction of barley or other grain,  
21 malt, and hops in water and includes, but is not limited to, beer,  
22 ale, stout, lager beer, porter, and near beer;

23                  (5) Alcoholic liquor includes alcohol, spirits, wine,  
24 beer, and any liquid or solid, patented or not, containing alcohol,  
25 spirits, wine, or beer and capable of being consumed as a beverage

1 by a human being. Alcoholic liquor also includes confections or  
2 candy with alcohol content of more than one-half of one percent  
3 alcohol. The act does not apply to (a) alcohol used in the  
4 manufacture of denatured alcohol produced in accordance with acts  
5 of Congress and regulations adopted and promulgated pursuant to  
6 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,  
7 scientific, culinary, or toilet preparations, or food products  
8 unfit for beverage purposes, but the act applies to alcoholic  
9 liquor used in the manufacture, preparation, or compounding of such  
10 products or confections or candy that contains more than one-half  
11 of one percent alcohol, or (c) wine intended for use and used by  
12 any church or religious organization for sacramental purposes;

13 (6) Near beer means beer containing less than one-half of  
14 one percent of alcohol by volume;

15 (7) Original package means any bottle, flask, jug, can,  
16 cask, barrel, keg, hogshead, or other receptacle or container  
17 used, corked or capped, sealed, and labeled by the manufacturer of  
18 alcoholic liquor to contain and to convey any alcoholic liquor;

19 (8) Manufacturer means every brewer, fermenter,  
20 distiller, rectifier, winemaker, blender, processor, bottler,  
21 or person who fills or refills an original package and others  
22 engaged in brewing, fermenting, distilling, rectifying, or bottling  
23 alcoholic liquor, including a wholly owned affiliate or duly  
24 authorized agent for a manufacturer;

25 (9) Nonbeverage user means every manufacturer of any

1 of the products set forth and described in subsection (4) of  
2 section 53-160, when such product contains alcoholic liquor, and  
3 all laboratories, hospitals, and sanatoria using alcoholic liquor  
4 for nonbeverage purposes;

5 (10) Manufacture means to distill, rectify, ferment,  
6 brew, make, mix, concoct, process, blend, bottle, or fill an  
7 original package with any alcoholic liquor and includes blending  
8 but does not include the mixing or other preparation of drinks for  
9 serving by those persons authorized and permitted in the act to  
10 serve drinks for consumption on the premises where sold;

11 (11) Wholesaler means a person importing or causing to be  
12 imported into the state or purchasing or causing to be purchased  
13 within the state alcoholic liquor for sale or resale to retailers  
14 licensed under the act, whether the business of the wholesaler is  
15 conducted under the terms of a franchise or any other form of an  
16 agreement with a manufacturer or manufacturers, or who has caused  
17 alcoholic liquor to be imported into the state or purchased in  
18 the state from a manufacturer or manufacturers and was licensed  
19 to conduct such a business by the commission on May 1, 1970, or  
20 has been so licensed since that date. Wholesaler does not include  
21 any retailer licensed to sell alcoholic liquor for consumption off  
22 the premises who sells alcoholic liquor other than beer or wine  
23 to another retailer pursuant to section 53-175, except that any  
24 such retailer shall obtain the required federal wholesaler's basic  
25 permit and federal wholesale liquor dealer's special tax stamp.

1 Wholesaler includes a distributor, distributorship, and jobber;

2 (12) Person means any natural person, trustee,  
3 corporation, partnership, or limited liability company;

4 (13) Retailer means a person who sells or offers for sale  
5 alcoholic liquor for use or consumption and not for resale in any  
6 form except as provided in section 53-175;

7 (14) Sell at retail and sale at retail means sale for use  
8 or consumption and not for resale in any form except as provided in  
9 section 53-175;

10 (15) Commission means the Nebraska Liquor Control  
11 Commission;

12 (16) Sale means any transfer, exchange, or barter in any  
13 manner or by any means for a consideration and includes any sale  
14 made by any person, whether principal, proprietor, agent, servant,  
15 or employee;

16 (17) To sell means to solicit or receive an order for, to  
17 keep or expose for sale, or to keep with intent to sell;

18 (18) Restaurant means any public place (a) which is kept,  
19 used, maintained, advertised, and held out to the public as a place  
20 where meals are served and where meals are actually and regularly  
21 served, (b) which has no sleeping accommodations, and (c) which  
22 has adequate and sanitary kitchen and dining room equipment and  
23 capacity and a sufficient number and kind of employees to prepare,  
24 cook, and serve suitable food for its guests;

25 (19) Club means a corporation (a) which is organized

1 under the laws of this state, not for pecuniary profit, solely  
2 for the promotion of some common object other than the sale or  
3 consumption of alcoholic liquor, (b) which is kept, used, and  
4 maintained by its members through the payment of annual dues, (c)  
5 which owns, hires, or leases a building or space in a building  
6 suitable and adequate for the reasonable and comfortable use and  
7 accommodation of its members and their guests, and (d) which  
8 has suitable and adequate kitchen and dining room space and  
9 equipment and a sufficient number of servants and employees for  
10 cooking, preparing, and serving food and meals for its members  
11 and their guests. The affairs and management of such club shall  
12 be conducted by a board of directors, executive committee, or  
13 similar body chosen by the members at their annual meeting, and  
14 no member, officer, agent, or employee of the club shall be paid  
15 or shall directly or indirectly receive, in the form of salary or  
16 other compensation, any profits from the distribution or sale of  
17 alcoholic liquor to the club or the members of the club or its  
18 guests introduced by members other than any salary fixed and voted  
19 at any annual meeting by the members or by the governing body of  
20 the club out of the general revenue of the club;

21 (20) Hotel means any building or other structure (a)  
22 which is kept, used, maintained, advertised, and held out to  
23 the public to be a place where food is actually served and  
24 consumed and sleeping accommodations are offered for adequate  
25 pay to travelers and guests, whether transient, permanent, or

1 residential, (b) in which twenty-five or more rooms are used for  
2 the sleeping accommodations of such guests, and (c) which has one  
3 or more public dining rooms where meals are served to such guests,  
4 such sleeping accommodations and dining rooms being conducted in  
5 the same buildings in connection therewith and such building or  
6 buildings or structure or structures being provided with adequate  
7 and sanitary kitchen and dining room equipment and capacity;

8 (21) Nonprofit corporation means any corporation  
9 organized under the laws of this state, not for profit, which has  
10 been exempted from the payment of federal income taxes;

11 (22) Minor means any person, male or female, under  
12 twenty-one years of age, regardless of marital status;

13 (23) Brand means alcoholic liquor identified as the  
14 product of a specific manufacturer;

15 (24) Franchise or agreement, with reference to the  
16 relationship between a manufacturer and wholesaler, includes one or  
17 more of the following: (a) A commercial relationship of a definite  
18 duration or continuing indefinite duration which is not required  
19 to be in writing; (b) a relationship by which the wholesaler is  
20 granted the right to offer and sell the manufacturer's brands by  
21 the manufacturer; (c) a relationship by which the franchise, as an  
22 independent business, constitutes a component of the manufacturer's  
23 distribution system; (d) a relationship by which the operation  
24 of the wholesaler's business is substantially associated with  
25 the manufacturer's brand, advertising, or other commercial symbol

1 designating the manufacturer; and (e) a relationship by which the  
2 operation of the wholesaler's business is substantially reliant on  
3 the manufacturer for the continued supply of beer;

4 (25) Territory or sales territory means the wholesaler's  
5 area of sales responsibility for the brand or brands of the  
6 manufacturer;

7 (26) Suspend means to cause a temporary interruption of  
8 all rights and privileges of a license;

9 (27) Cancel means to discontinue all rights and  
10 privileges of a license;

11 (28) Revoke means to permanently void and recall all  
12 rights and privileges of a license;

13 (29) Generic label means a label which is not protected  
14 by a registered trademark, either in whole or in part, or to  
15 which no person has acquired a right pursuant to state or federal  
16 statutory or common law;

17 (30) Private label means a label which the purchasing  
18 wholesaler or retailer has protected, in whole or in part, by  
19 a trademark registration or which the purchasing wholesaler or  
20 retailer has otherwise protected pursuant to state or federal  
21 statutory or common law;

22 (31) Farm winery means any enterprise which produces and  
23 sells wines produced from grapes, other fruit, or other suitable  
24 agricultural products of which at least seventy-five percent of  
25 the finished product is grown in this state or which meets the

1 requirements of section 53-123.13;

2 (32) Campus, as it pertains to the southern boundary of  
3 the main campus of the University of Nebraska-Lincoln, means the  
4 south right-of-way line of R Street and abandoned R Street from  
5 10th to 17th streets and, as it pertains to the western boundary  
6 of the main campus of the University of Nebraska-Lincoln, means the  
7 east right-of-way line of 10th Street from R Street to Holdrege  
8 Street (Salt Creek Roadway);

9 (33) Brewpub means any restaurant or hotel which produces  
10 on its premises a maximum of ten thousand barrels of beer per year;

11 (34) Manager means a person appointed by a corporation  
12 or limited liability company to oversee the daily operation of  
13 the business licensed in Nebraska. A manager shall meet all the  
14 requirements of the act as though he or she were the applicant,  
15 ~~except for~~ including residency and citizenship;

16 (35) Shipping license means a license granted pursuant to  
17 section 53-123.15;

18 (36) Sampling means consumption on the premises of a  
19 retail licensee of not more than five samples of one fluid ounce or  
20 less of alcoholic liquor by the same person in a twenty-four-hour  
21 period;

22 (37) Microbrewery means any small brewery producing a  
23 maximum of ten thousand barrels of beer per year;

24 (38) Craft brewery means a brewpub or a microbrewery;

25 (39) Local governing body means (a) the city council or

1 village board of trustees of a city or village within which the  
2 licensed premises are located or (b) if the licensed premises are  
3 not within the corporate limits of a city or village, the county  
4 board of the county within which the licensed premises are located;

5 (40) Consume means knowingly and intentionally drinking  
6 or otherwise ingesting alcoholic liquor;

7 (41) Microdistillery means a distillery located in  
8 Nebraska that is licensed to distill liquor on the premises of the  
9 distillery licensee and produces ten thousand or fewer gallons of  
10 liquor annually; and

11 (42) Cigar bar means an establishment operated by a  
12 holder of a Class C liquor license which:

13 (a) Does not sell food;

14 (b) In addition to selling alcohol, annually receives ten  
15 percent or more of its gross revenue from the sale of cigars and  
16 other tobacco products and tobacco-related products, except from  
17 the sale of cigarettes as defined in section 69-2702. A cigar bar  
18 shall not discount alcohol if sold in combination with cigars or  
19 other tobacco products and tobacco-related products;

20 (c) Has a walk-in humidor on the premises; and

21 (d) Does not permit the smoking of cigarettes.

22 Sec. 2. Section 53-125, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 53-125 No license of any kind shall be issued to (1)  
25 a person who is not a resident of Nebraska, except in case of

1 railroad, airline, or boat licenses, (2) a person who is not of  
2 good character and reputation in the community in which he or  
3 she resides, (3) a person who is not a citizen of the United  
4 States, (4) a person who has been convicted of or has pleaded  
5 guilty to a felony under the laws of this state, any other state,  
6 or the United States, (5) a person who has been convicted of or  
7 has pleaded guilty to any Class I misdemeanor pursuant to Chapter  
8 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense  
9 under a prior criminal statute or in another state, except that  
10 any additional requirements imposed by this subdivision on May  
11 18, 1983, shall not prevent any person holding a license on such  
12 date from retaining or renewing such license if the conviction or  
13 plea occurred prior to May 18, 1983, (6) a person whose license  
14 issued under the Nebraska Liquor Control Act has been revoked for  
15 cause, (7) a person who at the time of application for renewal of  
16 any license issued under the act would not be eligible for such  
17 license upon initial application, (8) a partnership, unless one of  
18 the partners is a resident of Nebraska and unless all the members  
19 of such partnership are otherwise qualified to obtain a license,  
20 (9) a limited liability company, ~~unless one of the members is a~~  
21 ~~resident of Nebraska and unless all the members of such company are~~  
22 ~~otherwise qualified to obtain a license, if any officer or director~~  
23 ~~of the limited liability company or any member having an ownership~~  
24 ~~interest in the aggregate of more than twenty-five percent of such~~  
25 ~~company would be ineligible to receive a license under this section~~

1 for any reason other than the reasons stated in subdivisions (1)  
2 and (3) of this section, or if a manager of a limited liability  
3 company licensee would be ineligible to receive a license under  
4 this section for any reason, (10) a corporation, if any officer,  
5 manager, or director of the corporation or any stockholder owning  
6 in the aggregate more than twenty-five percent of the stock of  
7 such corporation would be ineligible to receive a license under  
8 this section for any reason other than the reasons stated in  
9 subdivisions (1) and (3) of this section, except that a manager  
10 of a corporate licensee shall be a resident of Nebraska. This  
11 subdivision shall not apply to railroad licenses, (11) a person  
12 whose place of business is conducted by a manager or agent unless  
13 such manager or agent possesses the same qualifications required of  
14 the licensee, (12) a person who does not own the premises for which  
15 a license is sought or does not have a lease or combination of  
16 leases on such premises for the full period for which the license  
17 is to be issued, (13) except as provided in this subdivision,  
18 an applicant whose spouse is ineligible under this section to  
19 receive and hold a liquor license. Such applicant shall become  
20 eligible for a liquor license only if the commission finds from the  
21 evidence that the public interest will not be infringed upon if  
22 such license is granted. It shall be prima facie evidence that when  
23 a spouse is ineligible to receive a liquor license the applicant  
24 is also ineligible to receive a liquor license. Such prima facie  
25 evidence shall be overcome if it is shown to the satisfaction of

1 the commission (a) that the licensed business will be the sole  
2 property of the applicant and (b) that such licensed premises will  
3 be properly operated, (14) a person seeking a license for premises  
4 which do not meet standards for fire safety as established by the  
5 State Fire Marshal, (15) a law enforcement officer, except that  
6 this subdivision shall not prohibit a law enforcement officer from  
7 holding membership in any nonprofit organization holding a liquor  
8 license or from participating in any manner in the management or  
9 administration of a nonprofit organization, or (16) a person less  
10 than twenty-one years of age.

11           When a trustee is the licensee, the beneficiary or  
12 beneficiaries of the trust shall comply with the requirements  
13 of this section, but nothing in this section shall prohibit any  
14 such beneficiary from being a minor or a person who is mentally  
15 incompetent.

16           Sec. 3. Original section 53-125, Reissue Revised Statutes  
17 of Nebraska, and section 53-103, Revised Statutes Supplement, 2009,  
18 are repealed.